

HON. BARBARA J. ROTHSTEIN

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

KING COUNTY,

Plaintiff,

vs.

EXPRESS SCRIPTS, INC., EXPRESS
SCRIPTS ADMINISTRATORS, LLC,
MEDCO HEALTH SOLUTIONS, INC.,
MERCK-MEDCO, ESI MAIL ORDER
PROCESSING, INC., ESI MAIL
PHARMACY SERVICE, INC., EXPRESS
SCRIPTS PHARMACY, INC., EXPRESS
SCRIPTS SPECIALTY DISTRIBUTION
SERVICES, INC., OPTUMINSIGHT, INC.,
OPTUMINSIGHT LIFE SCIENCES, INC.,
THE LEWIN GROUP, INC., INGENIX
PHARMACEUTICAL SERVICES, INC.,
INGENIX, INC., OPTUMRX, INC., and
OPTUM, INC.,

Defendants.

Case No. 2:24-cv-00049-BJR

**STIPULATED MOTION AND ORDER
STAYING DISCOVERY AND
DEADLINES**

1 Plaintiff King County (“Plaintiff”) and Defendants Express Scripts, Inc., Express Scripts
 2 Administrators, LLC, Medco Health Solutions, Inc., ESI Mail Order Processing, Inc., ESI Mail
 3 Pharmacy Service, Inc., Express Scripts Pharmacy, Inc., Express Scripts Specialty Distribution
 4 Services, Inc., OptumRx, Inc., Optum, Inc., OptumInsight, Inc., OptumInsight Life Sciences, Inc.,
 5 and The Lewin Group, Inc. (collectively, “Defendants”) respectfully move this Court for entry of
 6 a stay of discovery pending resolution of certain Defendants’ (the “Jurisdictional Defendants”) motion to dismiss for lack of personal jurisdiction (Dkt. 56) and certain Defendants’ motion to
 7 dismiss for failure to state a claim (Dkt. 57 and collectively the “Motions to Dismiss”). The parties
 8 have met and conferred in good faith and hereby stipulate as follows:
 9

- 10 • The pending Motions to Dismiss ask the Court to determine whether it may exercise
 11 personal jurisdiction over certain Defendants (*see* Dkts. 56, 65, 75) and whether the
 12 County has stated claims upon which relief may be granted against the remaining
 Defendants (*see* Dkts. 57, 64, 74).
- 13 • Accordingly, the parties agree that a stay of discovery in this case to a date 14 days
 14 after the pending Motions to Dismiss are decided by the Court or May 1, 2025,
 15 whichever is earlier, is appropriate because the pending Motions to Dismiss could
 16 narrow or broaden the legal issues in this case, determine whether the Court has
 jurisdiction to hear claims against Jurisdictional Defendants, and inform the Parties’
 discovery efforts going forward.
- 17 • Subject to the Court entering a stay of discovery, and because Plaintiff is a party to *In*
 18 *re National Prescription Opiate Litigation*, 1:17-md-2804 (N.D. Ohio) (the MDL), and
 19 is therefore bound by the protective order in that case, Defendants will deem produced
 20 in this action their document productions in the MDL, with some specific exceptions.
 21 The Express Scripts Defendants do not intend to reproduce production volumes
 22 ESI_MDL_033 and ESI_MDL_036, and ESI_MDL_R_001 because they contain only
 23 PBM and mail order pharmacy data for the MDL bellwether states of New York and
 24 Texas. In addition, Express Scripts will deem produced volumes ESI_MDL_023 and
 ESI_MDL_035, which contain highly confidential and sensitive information regarding
 the identities of members of Express Scripts’ Pharmacy & Therapeutics Committee,
 only after Plaintiff agrees to be bound by the Protective Order Regarding Identities of
 Members of Express Scripts’ Pharmacy and Therapeutics Committee (attached as
 Exhibit A).
- 25 • Similarly, the Optum Defendants will not reproduce production volumes
 26 OPTUMRX_MDL_046, OPTUMRX_MDL_056, OPTUMRX_MDL_060,
 OPTUMRX_MDL_065, OPTUMRX_MDL_066, or OPTUMRX_MDL_092, as they
 27 contain claims data related only to the MDL bellwether states (New York, Texas, and
 Missouri). Further, OptumRx will deem produced volumes OPTUMRX_MDL_038,

1 OPTUMRX_MDL_040, OPTUMRX_MDL_045, OPTUMRX_MDL_052,
 2 OPTUMRX_MDL_061, OPTUMRX_MDL_068, OPTUMRX_MDL_070,
 3 OPTUMRX_MDL_072, OPTUMRX_MDL_076, OPTUMRX_MDL_088,
 4 OPTUMRX_MDL_090 only after Plaintiff agrees to be bound by the Protective Order
 Regarding Identities of Members of OptumRx, Inc.'s Pharmacy and Therapeutics
 Committee (attached as Exhibit B).

- 5 • Because these materials have already been made available to Plaintiff in the MDL,
 6 Defendants need not physically reproduce them. Defendants will provide these
 7 materials subject to their understanding that these materials will continue to be treated
 8 as Confidential, Highly Confidential, Highly Confidential – Attorneys' Eyes Only,
 9 Attorneys' Eyes Only – P&T Members, or Confidential Protected Health Information
 10 as the case may be and protected from disclosure, under the MDL Protective Order and
 11 Pharmacy and Therapeutics Committee Protective Orders. Reproduction of any
 material in this case is not an admission by Defendants that the material is relevant or
 admissible. Defendants reserve all rights and do not waive any defenses or positions
 with respect to the materials reproduced in this case or any other applicable privileges
 and protections permitted by law.
- 12 • For the reasons stated above, the parties agree that a temporary stay of discovery
 13 represents the most efficient path forward for the parties and this Court.
- 14 • The parties also agree that Defendants maintain all of their defenses and do not waive
 15 any defense, including the jurisdictional defenses raised in the Jurisdictional
 Defendants' Motion to Dismiss.¹

16 ACCORDINGLY, the parties jointly move that the case deadlines be stayed to a date 14
 17 days after the pending Motions to Dismiss are decided by the Court or May 1, 2025, whichever is
 18 earlier, and all discovery be stayed until such time.

19 IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.
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24 ¹ *Coe v. Philips Oral Healthcare, Inc.*, No. C13-518-MJP, 2014 U.S. Dist. LEXIS 19186, at *6
 25 (W.D. Wash. Feb. 14, 2014) (party did not waive jurisdictional defenses by entering into
 26 stipulation); *Elec. Mirror LLC v. Janmar Lighting, Inc.*, No. C10-976RSL, 2010 U.S. Dist. LEXIS
 27 140388, at *1-2 (W.D. Wash. Dec. 14, 2010) ("Janmar promptly moved to dismiss for lack of
 personal jurisdiction on July 15, 2010. Based on the parties' subsequent stipulation, the Court
 stayed discovery pending a resolution of the motion to dismiss. On November 8, 2010, the Court
 granted Janmar's motion and dismissed the complaint for lack of personal jurisdiction.")

DATED this 1st day of October, 2024.

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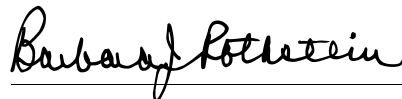
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Optum, Inc., OptumInsight, Inc.,
OptumInsight Life Sciences, Inc., and The
Lewin Group, Inc.*

ORDER

THEREFORE, being fully advised, the Court ORDERS that the stipulated motion to stay is GRANTED. All deadlines are STAYED pending resolution of certain Defendants' motion to dismiss for lack of personal jurisdiction (Dkt. 56) and certain Defendants' motion to dismiss for failure to state a claim (Dkt. 57), and all discovery is STAYED until 14 days after such resolution or May 1, 2025, whichever is earlier.

IT IS SO ORDERED.

DATED this 2nd day of October 2024.



Honorable Barbara J. Rothstein
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that, on October 2, 2024, I caused a true and correct copy of the foregoing to be filed in this Court's CM/ECF system, which sent notification of such filing to counsel of record.

DATED October 2, 2024.

/s/ Alicia Cobb
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